# No. 15,218

IN THE

# United States Court of Appeals

## For the Ninth Circuit

---

MARION B. FOLSOM, Secretary of the Department of Health, Education, and Welfare,

*Appellant,*

vs.

GRETTA N. PEARSALL,

*Appellee.*

**On Appeal from the United States District Court for the Northern District of California, Southern Division.**

## REPLY BRIEF FOR THE APPELLANT.

---


LLOYD H. BURKE,
United States Attorney.
WILLIAM B. SPOHN,
Assistant United States Attorney,
*Attorneys for the Appellant.*

*Of Counsel:*
ARTHUR C. MILLER,
ELIZABETH M. DOYLE,
Attorneys, Department of Health, Education, and Welfare.

## Subject Index

## Table of Authorities Cited

## Statutes



## Miscellaneous

No. 15,218

IN THE

# United States Court of Appeals

## For the Ninth Circuit

---

MARION B. FOLSOM, Secretary of the Department of Health, Education, and Welfare,

*Appellant,*

vs.

GRETTA N. PEARSALL,

*Appellee.*

**On Appeal from the United States District Court for the Northern District of California, Southern Division.**

## REPLY BRIEF FOR THE APPELLANT.

---

### INTRODUCTORY STATEMENT.

The opening brief for the appellant was based on four principal points of argument. The appellee's brief does not respond to those points in the same order nor under the same captions, and we are unable to identify specifically the portions of the appellee's brief wherein it may even undertake to respond to certain of the appellant's points. Moreover, the appellee's brief does not present any points which have not already been discussed in the appellant's opening brief. This reply will accordingly be limited

to showing the appellee's failure to meet the appellant's points and to correcting certain misstatements and fallacious reasoning in the appellee's brief.

---

## ARGUMENT.

### I.

**THE APPELLEE'S BRIEF DOES NOT MEET THE APPELLANT'S POINT THAT THE TERM "REMARRIAGE" IN SECTION 202(g) OF THE SOCIAL SECURITY ACT IS A FEDERAL TERM AND MUST BE INTERPRETED IN THE CONTEXT OF THAT ACT.**

**A. The appellee's brief fails to recognize that remarriage is a termination event and not a deduction event.**

The appellee's brief scarcely attempts a response to this point, although indicating (on page 19) that the appellee understands that the appellant is arguing that the term "remarries" appears only in Section 202(g) of the Act (42 U.S.C.A. 402(g)). However, the appellant's argument is rather that the very section of the Act which creates the benefits provides for their termination, by providing that such benefits *end* upon the occurrence of the events listed therein, including "she remarries." Similarly the sections of the Act creating entitlement to benefits for a widow (Sec. 202(e)(1)); a widower (Sec. 202(f)(1)); a child (Sec. 202(d)(1)); and a parent (Sec. 202(k)(1)) (42 U.S.C.A. 402(e)(1), (f)(1), (d)(1) and (k)(1)) respectively provide that benefits *end* when the beneficiary marries or remarries.

In each instance, the very section of the Act which creates the individual's entitlement to benefits provides the specific events on the happening of which

the benefits end. Under the appellee's contention, the "ending" of benefits upon "remarriage" would be in legal effect, merely a *suspension* of benefits, subject to lifting of the suspension upon procurement of an annulment of the remarriage. Yet Congress expressly provided for the "ending" of the benefits upon "remarriage" of the beneficiary, while it provided in a different section of the Act (Sec. 203(b) and (c)) (42 U.S.C.A. 403(b) and (c)) for deductions from benefits *during* the months in which certain other circumstances exist. E.g., receipt of earnings in excess of the specified amount, and failure of the widow or former wife divorced of the wage earner to have his child in her care. Section 203(b) and (c) therefore provides, by way of deductions, for *suspension* of benefits during certain months, in direct contrast to Section 202 which not only creates the rights to monthly benefits but also provides for the *ending* of the benefits.

The appellee's brief urges on pages 19 and 20 that remarriage differs from the other termination events specified in Section 202(g), supra, since a marriage may be undone, but death or attainment of a specified age is a final act which cannot be undone. The very fact that Congress classed remarriage with death and attainment of age is in our opinion evidence that Congress did not view remarriage as a less final act than death or attainment of age insofar as its effect on entitlement to benefits is concerned.

To argue—as on pages 20 and 21 of the appellee's brief—that Congress could have provided expressly

that benefits would not be reinstated upon the annulment of a voidable marriage, is merely to grasp at straws. Congress said that benefits end when the beneficiary remarries and we submit that no more explicit and adequate term than "end" could have been employed.

The appellee's brief suggests on page 21 that the annulment situation was not contemplated by Congress. If this were so, it would hardly warrant amendment by judicial legislation in violation of the well-settled rule that:

> "* * * where the language of the statute is plain and unambiguous and does not result in absurd or obviously unintended results, courts are not at liberty to make substitution in language to meet the supposed equity of a particular case." *Moncrief v. Hobby,* 133 F. Supp. 152, 158-9 (Md. 1955), aff'd sub nom. *Moncrief v. Folsom,* 233 F. 2d 471 (4th Cir. 1956) and cited on pages 31 and 32 of the appellant's opening brief.

Extended and expert consideration was given to the drafting and enactment of the Social Security Act, and to the extensive Amendments of 1939 (53 Stat. 1360 et seq.) which created the several categories of monthly benefits. It is therefore improbable that the framers of this important and nation-wide legislation did not realize that not all marriages end in death or divorce and that many marriages, some void and others voidable, are annulled.

**B. The appellee's brief ignores the language of Federal law and construes a Federal term on the basis of state law to achieve an illogical conclusion.**

The appellee's response to this point appears to be set forth on pages 6-13 inclusive of the appellee's brief. The most significant aspect of the appellee's argument is its failure to respond to the appellant's contention that once it has been determined under applicable state law that a marriage is voidable, the effect of annulment of such marriage under the terms of the Act is a question of Federal, and not state, law. See the appellant's opening brief at page 16. Nowhere does the appellee recognize the decision of the Supreme Court in *N.L.R.B. v. Hearst Publications, Inc.,* 322 U.S. 111 (1944), wherein the following cogent statement appears at page 123:

> "Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patchwork plan for securing freedom of employees' organization and of collective bargaining. The Wagner Act is federal legislation, administered by a national agency, intended to solve a national problem on a national scale. Cf. e.g., Sen. Rep. No. 573, 74th Cong., 1st Sess. 2-4. It is an Act, therefore, in reference to which it is not only proper, but necessary for us to assume, 'in the absence of a plain indication to the contrary, that Congress * * * is not making the application of the federal act dependent on state law.' *Jerome v. United States,* 318 U.S. 101, 104. Nothing in the statute's background, history, terms or purposes indicates its scope is to be limited by such varying local conceptions, either statutory or judicial, or

> that it is to be administered in accordance with whatever different standards the respective states may see fit to adopt for the disposition of unrelated, local problems."

So, too, in the Social Security Act, we submit that in the absence of clear Congressional directive, the interpretation of the term "remarries" in Section 202(g), supra, is not to be varied from state to state and this Act, too, is not "to be administered in accordance with whatever different standards the respective states may see fit to adopt * * *".

Whether or not an annulment of a voidable remarriage has the effect of reviving a right to benefits under the Act, which had ended upon entering into the remarriage, is a question which calls for the same, nation-wide answer. Congress never intended that the answer to this question should vary from case to case, depending upon either the law of the state in which the remarriage was contracted or the law of the state where it was annulled.

The appellee's response to the appellant's argument that the term "remarries" is a Federal term is a discussion of state court decisions. E.g., the following statement on page 8 of the appellee's brief:

> "Indeed, when the precise question presented on this appeal has arisen before for decision the courts have consistently rejected the position of appellant, have applied the doctrine of annulment 'relating back,' and have reinstated persons in appellee's position to the benefits they were receiving before the marriage in question."

In support thereof, the appellee cites the same four Workmen's Compensation cases which were cited by the Court below and which are discussed on pages 19 and 20 of the opening brief, and the recent decision in *Mays v. Folsom,* 143 F. Supp. 784 (Idaho 1956), which is discussed below. The precise question presented to this Court, however, has not heretofore been presented to any state or Federal court. As pointed out in the opening brief at pages 19 and 20, the state court decisions in Workmen's Compensation cases do not present the same question, since the Workmen's Compensation laws not only differ in their provisions but differ also from the Social Security Act.

Moreover, as shown at pages 19 and 20 of the opening brief, entitlement to Workmen's Compensation is related primarily to *dependency* rather that to *status.* The appellee's brief attempts (at page 10) to discredit this distinction by citing dicta in two Federal district court decisions to the effect that the Social Security Act was designed to relieve hardship on dependents. We certainly do not deny that such was one of the purposes of the Act—but point out that the purpose can only be accomplished within the provisions of the Act. The appellee's first citation—*Ray v. Social Security Board,* 73 F. Supp. 58 (S.D. Ala. 1947)—was based on certain peculiarities of local law. This was noted in the later decision in *Mayers v. Ewing,* 102 F. Supp. 201 (E.D. Penn. 1952), particularly at page 203. The appellee's second citation— *Stuart v. Hobby,* 128 F. Supp. 609 (S.D.N.Y. 1955)— upheld

the administrative denial of widow's insurance benefits to the plaintiff on the ground that she did not qualify therefor under the terms of the Act as interpreted by the predecessor of the present appellant. We accordingly submit that neither decision cited by the appellee should cause this Court to disturb the administrative action in the present case by affirming the decision here on appeal.

The analogy which the appellee attempts between state Workmen's Compensation statutes and the Federal Social Security Act, all of a beneficent nature, would be valid only if the language and the statutory purposes were the same or very similar. However, there is no marked similarity of the language of the several state statutes to that of the Social Security Act. Even if the language were identical, the interpretation of state statutes by state courts, unless so uniform as to have given to the term in question a well recognized meaning which Congress must be presumed to have had in mind at the time the Federal law was enacted, can be of little value in interpreting the Federal statute. We submit that the four cases cited by the appellee construing and applying the non-uniform statutes of Indiana, Arizona, Tennessee and North Dakota, cannot possibly be said to have given to the term "remarries" such a uniform and widely recognized meaning that Congress must be deemed to have had that meaning in mind when it enacted Section 202(g) of the Social Security Act, *supra.*

The *Mays* case cited by the appellee presents the closest parallel to the present case since it construes

the term "marries" as used by Congress in Section 202(d) of the Act, *supra*. It should be noted, however, that the *Mays* case relies heavily on the decision of the Court below in the present case, and cannot properly be regarded as authority in support of the decision here on appeal.

The discussion of *Hahn v. Gray,* 203 F. 2d 625 (C.A.D.C. 1953) on pages 14 to 16 of the appellee's brief is apparently also addressed to the appellant's point I-B. We urge again that the language of that decision dealing with the annulment is not simply dicta but is one of the grounds of the decision. Even the excerpt from the *Hahn* decision quoted at page 15 of the appellee's brief shows that the main basis of the court's holding that Mrs. Hahn "was no longer the unremarried widow of a veteran and was properly denied restoration to the pension rolls," was the fact that, under the New York law, as said by the court, "marriages induced by fraud, are merely voidable, and are valid for all purposes until judicially declared void."

Although the decree of annulment in the *Hahn* case did not expressly purport to be an annulment of the marriage *ab initio,* nevertheless the presence or the absence of such decretal language is not a valid distinction since, as conceded at page 16 of the appellee's brief, in New York, in accordance with the general rule, a decree of annulment of a voidable marriage is *ab initio* regardless of whether or not the decree so specifies. Nor can the *Hahn* case be distinguished on the ground that the decree did not be-

come effective until three months afterward, since at the conclusion of that period, the decree rendered the marriage void *ab initio*. It does not follow—as the appellee here contends—from the fact that the Court of Appeals for the District of Columbia quoted from the language of the New York decree of annulment, that had it contained the superfluous *ab initio* language—or had it been effective upon rendition—the Court of Appeals would have reached a different conclusion as to the restoration of Mrs. Hahn's pension from the Veterans' Administration.

---

## II.

### THE APPELLEE'S BRIEF IMPROPERLY INVOKES POLICY CONSIDERATIONS TO AVOID THE PLAIN MEANING OF THE ACT.

Aside from the matters discussed above, the appellee's brief is devoted to a presentation of policy considerations to justify the interpretation by the Court below of state court decisions and the application of those decisions, so interpreted, to the present case. The appellee's contentions seem to be that the limitations on the application of the fiction of "relation back" of an annulment decree are applicable (1) only where the term "remarry" appears in an agreement between private parties such as a property settlement agreement, and (2) only where the spouse whose second marriage is annulled is fully protected by some provision for her maintenance by her second spouse. We submit that neither the cases here-

tofore cited and discussed nor any other cases support such contentions.

The appellee also seems to have overlooked the fact that two of the cases cited in the appellant's main brief—namely, *Sefton v. Sefton,* 45 C.2d 872, 291 P.2d 439 (1955), and *Keeney v. Keeney,* 211 La. 585, 30 So. 2d 549 (1947)—involved the question of the effect of an annulment on the terms "remarriage" or "marriage", appearing in a statute rather than in an agreement. Thus, *Sefton* involved the interpretation of the term "remarriage" in Section 139 of the California Civil Code, and *Keeney* interpreted the term "marriage" as used in Article 160 of the Louisiana Civil Code.

A basic fallacy of the appellee's argument appears to be the failure to realize that in construing the meaning of the terms "ending" and "remarries", as used in Section 202(g)(1) of the Act, the Federal courts are not confronted with a situation calling for a balancing of equities, as state courts sometimes are in determining what effect should be given to the fiction of "relation back" of a decree of annulment, but rather with a question of applying the plain terms of a Federal statute in a case in which a marriage legally and factually existed until annulled.

In this regard, the following excerpt from the decision in *Callow v. Thomas,* 322 Mass. 550, 78 N.E. 2d 637 (1948), is noteworthy:

> "While it doubtless is true that a decree of nullity ordinarily has the effect of making a marriage, even one which is voidable, void ab initio, this is

> a legal fiction which ought not to be pressed too far. To say that for all purposes the marriage never existed is unrealistic. Logic must yield to realities. Public policy requires that there must be some limits to the retroactive effects of a decree of annulment. It was said by Cardozo, C.J., in American Surety Co. v. Conner, 251 N.Y. 1, 9, 166 N.E. 783, 786, 65 A.L.R. 244, 'The decree of annulment destroyed the marriage from the beginning as a source of rights and duties * * * but it could not obliterate the past and make events unreal.' The better rule, we think, is that in the case of a voidable marriage transactions which have been concluded and things which have been done during the period of the supposed marriage ought not to be undone or reopened after the decree of annulment."

Within such "better rule" of the Massachusetts court in the *Callow* case and of the New York Court of Appeals in *Gaines v. Jacobsen,* 308 N.Y. 218, 124 N.E. 2d 290 (1954), discussed on pages 20 and 21 of the appellant's opening brief, it seems clear that in the case of the voidable remarriage which had the effect of ending the appellee's entitlement to benefits as unremarried widow of Delbert L. Pearsall, the ending of benefits "ought not to be undone or reopened after the decree of annulment."

Surely, whether or not the divorced spouse who contracts a voidable marriage can, after the annulment of that marriage, secure support from her second spouse cannot have any bearing on the interpretation of the term "remarry" in the Act. By the appellee's argument, however, the results in each case—even

where the facts were substantially similar—would vary from state to state, depending on the particular local law. Moreover, under the appellee's contention, a woman having grounds for divorce or for annulment of a voidable remarriage—one which could not be annulled at the election of the husband—could, in weighing the advantages and the disadvantages of electing to sue for annulment instead of divorce, be influenced by the expected reinstatement of benefits under the Act, and the amount of such benefits, in deciding whether to sue for annulment or for divorce. We submit that such a construction of the applicable provisions of the Social Security Act, potentially influencing the procurement of annulments of voidable marriages for pecuniary reasons and at the expense of the Federal Old-Age and Survivors Insurance Trust Fund, and, in some cases, at the expense of other beneficiaries, would be contrary to public policy, as well as to the Congressional intention clearly expressed by the statutory provision for the "ending" rather than the suspension of benefits with the month preceding the month in which the widow "remarries".

The appellee's brief also urges on pages 21 to 25 that no one would be materially prejudiced by the reinstatement of her benefits. In response, we should first correct the appellee's statement of our point as set forth on page 21 of appellee's brief. We do not argue that the doctrine of "relation back" should never be applied to third parties so as to affect their rights. Such a broad argument is obviously not required by the issues in the present case. We do urge, however,

that Section 86 of the California Civil Code and the decisions in *Price v. Price,* 24 C.A. 2d 462, 75 P. 2d 655 (1938), and *Sefton v. Sefton,* supra, show clearly that the application of that fictional doctrine in the instant case to achieve the appellee's reinstatement to benefit status is in no way supported by the law of California upon which the appellee relies, and that the Court below should not have resorted to "policy considerations" to minimize the cogency of the appellant's citation of these statutory and case authorities. Not only is there no room for policy considerations where the statutory language is clear, but we submit that the Court below relied on policy considerations which are incomplete and reflect only a portion of the total picture. The appellant's opening brief shows at pages 27-31 how "liberality" in the interpretation of the Social Security Act in determining the rights of one in the appellee's position may well be illiberal toward some persons and to the financial disadvantage of other equally if not more innocent persons who are also beneficiaries of the Act. Certainly the interpretation of the Court below prejudices the appellant who is charged by Congress with the administration of the Social Security Act.

The appellee's brief asserts on page 10 that "Federal decisions enunciating the purpose of the Act have stressed the element of relieving hardship on dependents as that for which the Act was designed." While an underlying purpose of "survivors insurance benefits" is to replace a loss of support presumably suffered by the death of the "insured individual" (the

wage earner), there is nothing in the Act which makes any of the various categories of "survivors insurance benefits" in any way dependent upon the financial condition or the need or lack of need of a claimant for any benefits. We have already discussed this assertion under I-B above.

The suggestion on page 23 of the appellee's brief that she and her child are being penalized for her innocent action is unsound. Not only do the "child's insurance benefits" continue notwithstanding the termination of the "mother's insurance benefits", but the termination of the latter benefits is clearly not a "penalty", since it is required by Section 202(g), supra, of the Act itself which limits the period of such benefits to the month preceding the month in which the beneficiary "remarries".

In support of its contention that the Act is to be liberally interpreted, appellee's brief cites (at pages 10 and 17) *United States v. Silk,* 331 U.S. 704 (1947). Certainly we do not quarrel with the doctrine there enunciated by the Supreme Court to the effect that the Social Security Act is to be liberally construed, but the appellant would point out that this decision itself on page 714 clearly recognizes that the court is not free to reach its decision without regard to the provisions of the Act. So, too, in *Newsom v. Social Security Board,* 70 F. Supp. 962 (E.D. Mich. 1947), which is cited at pages 17, 23 and 28 of the appellee's brief, the court recognized the beneficent purpose of the Act but upheld the decision of the Board (one of the administrative predecessors of the present appellant) in denying benefits to the plaintiff as mother of a child

because she did not come within the entitlement provisions of the Act.

We believe that we have sufficiently demonstrated in the opening brief—at pages 25-31—and hereinabove, that although the Social Security Act is a beneficent statute and as such is entitled to liberal interpretation, the policy arguments which are made by the appellee should properly be presented to Congress and not to the courts. We would only add that the suggestion on page 20 of the appellee's brief, that this Court should not be deterred from ruling that the appellee is entitled to reinstatement of benefits by the failure of Congress to provide for such reinstatement because "Federal and State statutes are constantly being interpreted by the courts in order to ascertain * * * what policy considerations dictate * * *" is a direct invitation to judicial legislation. However, as the decision in *Moncrief v. Hobby,* supra, clearly points out, a court is not at liberty to alter the legislative language to meet the supposed equity of a particular case. This is true even if the application of the statute as written produces harsh results. E.g., *Jay v. Boyd,* 351 U.S. 345, 357 (1956). Where the Congressional language expresses an intention reasonably intelligible and plain, it must be accepted without modification by resort to construction and conjecture. E.g., *Thompson v. United States,* 246 U.S. 547 (1918); *Gorin v. United States,* 111 F. 2d 712 (9th Cir. 1940).

The appellee's brief, while urging this Court to interpret the Act as "policy considerations dictate"—and as the appellee conceives those policy considera-

tions to be—ignores the well established rule that the interpretation of a law by the agency to which Congress has entrusted its administration should be given serious consideration by the courts. The appellee's brief attempts no response to the discussion of this point on pages 32 to 34 of the appellant's opening brief, nor to the cases cited therein. E.g., the decision of this Court under the Social Security Act in *United States et al. v. LaLone et al.,* 152 F. 2d 43 (1945).

We submit that the appellant's interpretation of the term "remarries" is entirely consistent with the Act and is therefore entitled to acceptance by this Court.

---

**CONCLUSION.**

We pointed out at page 32 of the opening brief, that this is a case of first impression. Its importance is demonstrated by the fact that since the decision of the Court below, there have been two other decisions by Federal district courts on closely similar issues. *Mays v. Folsom,* 143 F. Supp. 784 (Idaho 1956), cited by the appellee and discussed hereinabove, concerned the termination of child's insurance benefits granted pursuant to Section 202(d) of the Act, supra, and mother's insurance benefits granted pursuant to Section 202(g), also supra. Section 202(d) provides that a child's benefits shall end with the month preceding the first month in which such child marries, and Section 202(g) provides that the mother's insurance benefits end with the month preceding the month in which

no child of the deceased individual is entitled to child's insurance benefits. The sixteen-year-old child in the *Mays* case was receiving child's insurance benefits when she married. Such benefits were terminated because of her marriage and the mother's benefits were terminated because there was no longer a child entitled to benefits. Because of the child's age, her marriage was voidable and was annulled. The child's mother thereupon demanded that both the child and she be restored to benefit status. The district court ordered reinstatement and in so doing relied upon the decision now on appeal herein.

In the unreported case of *Pearce v. Folsom,* decided November 9, 1956 by the United States District Court for the Northern District of Mississippi, Delta Division, Civil Action No. 645, the court reversed the appellant's decision which is reported in C.C.H. Unemployment Insurance Service, Fed. ¶ 8224, that the plaintiff was not entitled to reinstatement of widow's insurance benefits upon annulment of her voidable remarriage. The appellant has requested an appeal in the *Pearce* case. Five additional cases are now pending in other Federal district courts, and several others are pending before referees of the Department of Health, Education, and Welfare, all involving the termination provisions of Section 202 of the Act, supra.

The present case is therefore an important one to the appellant and will certainly be regarded as a precedent in other circuits. For the reasons stated herein, as well as in the appellant's opening brief, we submit

that the decision of the Court below is in error and should be reversed by this Court.

Respectfully,

LLOYD H. BURKE,
United States Attorney,

WILLIAM B. SPOHN,
Assistant United States Attorney,

*Attorneys for the Appellant.*

*Of Counsel:*

ARTHUR C. MILLER,
ELIZABETH M. DOYLE,
Attorneys, Department of Health,
Education, and Welfare.

March, 1957.